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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,746	12/23/2004	Francois Quetel	Q83748	4368
23373 7590 09/17/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
DOE, SHANTA G				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,746

Applicant(s)

QUETEL ET AL.

Examiner

SHANTA G. DOE

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/27/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-16 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/27/2008 has been entered.

Response to Arguments

2. Applicant's arguments filed 8/27/2008 have been fully considered but they are not persuasive. The applicant's argument that the Swank reference fails to disclose that the process of claim 1 in which the inside surface of the perform neck is wetted during the process was not found persuasive because claim 1 as rejected in the previous (final office) action dated 5/28/2008 did not limit the claimed invention to the wetting of the inside surface.

Furthermore, the Swank reference was used to show that a method for decontaminating/sterilizing partially formed material (20) (preforms), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen peroxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is known that air

saturated with H_2O_2 vapor forms condensation droplets of H_2O_2 in air (mist or fog) when temperature decreases) continuously so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then pass in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit was known in the art and that it would have been obvious to combined Swank and the applicant's admitted prior art as indicated in the previous office.

Additionally, the preforms of the Swank reference do have necks (64, see fig 3) that are open and both the inside and outside surface of the neck is wetted and hence the method of Swank is intended to treat preforms with necks.

In addition, the applicant's arguments that there is no fog chamber upstream the lamp and that the hydrogen peroxide applicator is not housed in any particular chamber was not found persuasive. The examiner respectfully disagrees with the applicant's argument above because, as stated in the previous office action, the applicator 30 which creates fog is housed in the chamber 28 upstream to the chamber 38 which houses the UV lamp.

With regards to the double patenting rejection, the applicant argues that claims 1-8 contain "means" language which is not present in claims 9-16 and hence in that way claim 9-16 are not duplicates of claim 1-8, however, the examiner did not find this argument persuasive because claims 1-3 as currently written do not contain any

"means" language, furthermore claim 4-8 contains the language "spray means" and 12-16 contains the limitation "device for spaying". The examiner believes that a "device for spraying" and a 'spray means' would cover the same type of devices. Additionally, for this kind of double patenting, it states that it's proper if the two claims are so close in content that they both cover the same thing, despite a slight difference in wording.

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 9-16 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1-8 respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-3 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (APA) in view of Swank et al (US 6,183,691).

Regarding claims 1 and 9, the applicant admits that it is a known practice in the manufacture of decontaminated containers out of thermoplastic by blow molding or

stretch-blow molding, to decontaminate the preforms (preforms are made by molding them with their necks in the final shape and having final dimensions) rather than finished container and also that it was known to use UV radiation and/hydrogen peroxide (in liquid or atomized form) to decontaminate these performs (partially formed container or materials) (see applicant's specification page 1 line 1 - page 3 line 20). The applicant does not disclose that there is known method comprising, passing said preforms one after the other through an upstream chamber inside which a decontaminating liquid is sprayed continuously towards necks of said performs so as to wet inside and outside surfaces of the necks and in such a manner that a fog atmosphere of said decontaminating liquid is maintained inside said chamber so that said necks are bathed in said fog of decontaminating liquid, and passing said necks of said performs wetted by said decontaminating liquid in front of ultraviolet lamps arranged so as to irradiate said necks for at least a minimum predetermined period of time.

However, Swank ('691) discloses a method for decontaminating/sterilizing partially formed material (20), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen per oxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is know that air saturated with H_2O_2 vapor forms condensation droplet of H_2O_2 in air (mist or fog)when temperature decreases) continuously so as to

maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact wherein both the inside and out side surfaces of the necks are wetted by said decontaminating product, and then the preforms pass in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit (see Swank ('691) abs; fig. 2; col. 4 lines 40 - 65; col. 5 lines 30-40 and col. 6 lines 47 - 63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the decontaminating procedure taught by Swank in the known manufacturing practice as admitted by applicant since Swank discloses that it was known in the art to use such procedure to decontaminate partially formed container/material (preforms) and stated at col. 4 lines 60 - 65 that such a modification provides for a synergistic sterilization effect between the UV radiation and hydrogen peroxide.

Regarding claims 2 and 10, the combined references disclose the method as claimed in claim 1, wherein the fog is kept flowing through the upstream chamber (28) (hydrogen is sprayed in the form of fog or mist continuously in the sterilization chamber) so as to facilitate its renewal (see Swank col. 4 lines 40 - 65; col. 5 lines 30-40).

For claims 3 and 11, the combined references disclose the method as claimed in claim

1 wherein the decontaminating product is hydrogen peroxide H₂O₂ (see Swank abs.; Quetel [0003])

9. Claims 4, 5, 8, 12, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchau et al (WO 99/03667) in view of admitted prior art and Swank et al (US 6,183,691).

Regarding 4 and 12, Marchau discloses an installation (system) for the decontamination while they are moving of the necks of preforms (3) delivered one after the other to a loading device (see fig 1), said preforms being made of thermoplastic and being intended for making into containers (e.g. bottle (110)) by blow molding or stretch-blow molding, said decontamination installation being structurally and functionally connected to a perform feeder installation (2) comprising means for moving the performs one after the other; the decontamination installation contains a means of spraying(sprayer 45) the perform with hydrogen peroxide to decontaminate and lamps(104) said perform (Marchau(WO 99/03667 fig 1 page 3 paragraph 5; page 5 paragraph 2; page 6 paragraph 8; page 7 paragraph 1-4; page 11 paragraph 2). However Marchau does not disclose a installation for decontaminating preforms wherein said decontamination installation comprising ultraviolet lamps arranged so that the ultraviolet radiation completely irradiates the necks of the moving preforms, wherein the decontamination installation also includes, upstream of the ultraviolet lamps, a chamber traversed by said performs movement means of the feeder installation and in which means are provided

for spraying (sprayer 45 above the preforms movement means) a decontaminating product continuously towards necks of said perform so as to wet inside and outside surfaces of the necks and so as to maintain a fog of the decontaminating product inside said chamber.

Swank ('691) discloses a decontaminating/sterilizing system (installation) for partially formed material (20), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen per oxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is know that air saturated with H_2O_2 vapor forms condensation droplet of H_2O_2 in air(mist or fog) when temperature decreases) continuously towards necks of said performs so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then passes wetted necks in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit (see Swank ('691) abs; fig. 2; col. 4 lines 40 - 65; col. 5 lines 30-40 and col. 6 lines 47 - 63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the decontamination installation of Marchau with the decontamination system taught by Swank since Swank disclosed that it was known in

the art at the time the invention was made to use such an installation to decontaminate partially formed container in a fabrication process stated at col. 4 lines 60 - 65 that such a modification provides for a synergistic sterilization effect between the UV radiation and hydrogen peroxide.

For claims 5 and 13, the combined references disclose the installation as claimed in claim 4 and 12, wherein there is a sprayer which aims roughly in the direction of the necks of the moving preforms (see fig 1). However the combination does not disclose the installation of claim 4 wherein the spray means comprise at least two spray nozzles arranged one on either side of the preforms movement means and above these, with their respective axes aimed roughly in the direction of the necks of the moving preforms.

However, the applicant admits that it is conventional to place the neck of each preform under a decontaminant source to decontaminate the neck of preform wherein the decontaminant source are distributed on either side of the preform movement means (see applicant's specification page 2 lines 5 -line 20).

Swank ('691) discloses a decontamination installation comprising applicators / sprayers (30A and 30B) which may be nozzle for spraying hydrogen peroxide (see Swank col. 6 lines 47 - 63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the sprayers of the hydrogen peroxide (decontaminant source) of the combined references be arranged one on either side of the preform movement means and above these, since it was conventional to do so as admitted by the applicant.

Further more it would have been obvious to use a nozzle as the spraying means since it is well known in the art to use nozzle as a spraying means.

For claims 8 and 16, the combined references disclose the installation as claimed in claims 4 and 12. The combination does not disclose the installation of claims 4 and 12 wherein the preform movement means comprise an inclined slideway down which the preforms slide by gravity one after the other and in that this slideway passes through the chamber.

However, the applicant admits that it is known in the art to use a preform movement means comprising an inclined slideway down which the preforms slide by gravity one after the other in a decontamination installation (see applicant's specification page 2 lines 5 - line 20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the feeding means taught in the admitted prior art since it was known in the art at the time as a conventional preform movement means.

10. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchau et al (WO 99/03667) in view of the admitted prior art and Swank et al (US 6,183,691) as applied to claims 4 and 12 above, and further in view of Zelina et al (US 2002/0159915 A1).

Regarding claims 6 and 13, the combined references as applied to claim 4 and 12

above disclose the installation as claimed in claims 4 and 12. The combination does not disclose the installation of claims 4 and 12 further comprising suction means connected to the chamber in order to create a flow through the chamber such as to prevent local accumulations of the decontaminating product in suspension.

Zelina discloses a chamber used for decontamination with hydrogen peroxide where suction means (such as a blower (a blower will create a flow), vacuum pump or vent) is connected/provided (see Zelina paragraph [0051]).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect a suction mean to the hydrogen peroxide decontamination chamber of the combine reference as taught by Zelina, since Zelina states in paragraph [0051] that such a modification help to get rid of the spent decontaminate with in the decontamination chamber.

Allowable Subject Matter

10. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter:

Claim 7 is indicated as allowable because the installation as claimed in claim 4, wherein the preform movement means are surmounted, above the necks of the preforms, by a

rod of relatively small transverse dimension relative to the diameter of the necks could not be found in the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANTA G. DOE whose telephone number is (571)270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797